

1 **MOTION**

2 Plaintiff Richard B. Fox (“Fox”) moves that this proceeding by re-assigned to the Judge
3 Richard Seeborg.

4 **ARGUMENT**

5 Defendant HCA Holdings, Inc. (“HCA”) today filed a declination to proceed before a
6 magistrate judge in this proceeding.¹ The district court then sent out a “CLERK’S NOTICE OF
7 IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE.”²

8 This is not HCA’s first attempt to re-assign this case. On June 22 of this year HCA filed an
9 “Administrative Motion To Consider Whether Cases Should Be Related” seeking to have this case
10 related to other long-concluded litigation between the parties, *Fox v. Good Samaritan Hospital, et*
11 *al.*³ HCA’s argument was that the present case, Fox II, was an attempt by Fox to re-animate the
12 previously closed case, Fox I. HCA basically made a *res judicata* argument for relating the cases.

13 That motion was referred to Judge Richard Seeborg, who presided over Fox I. In a
14 carefully reasoned opinion, Judge Seeborg ruled that the cases were not related because the causes
15 of action in the two cases were quite different and arose from different events.⁴ He did, however,
16 recognize that if Fox prevailed in Fox II, it would result in re-opening Fox I, either under its
17 original case number or a new case number. *Id.*

18 Yesterday HCA filed its responsive pleading to the First Amended Complaint, a motion to
19 dismiss under Fed.R.Civ.Proc. Rules 12(b)(1) and 12(b)(6).⁵ Notwithstanding Judge Seeborg’s
20 recent finding that, “the complaint in Fox II does not reassert the prior [*Fox I*] claims...⁶, HCA
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23 ¹ Declination To Proceed Before A Magistrate Judge, July 9, 2015, Docket # 12.

24 ² Clerk’s Notice, July 9, 2015, Docket # 13.

25 ³ *Fox v. Good Samaritan Hospital, et al.*, Northern District of California case number
26 5:04cv00874-RS, Docket # 569.

27 ⁴ Order Denying Motion To Relate Case, June 23, 2015, Docket # 9, at p. 2.

28 ⁵ HCA’s Motion To Dismiss, July 8, 2015, Docket # 10.

⁶ Order Denying Motion To Relate Case, June 23, 2015, Docket # 9, at p. 2.

1 argued yet again in its Rule 12 motion that Fox I is *res judicata* as to Fox II.⁷

2 Notwithstanding Judge Seeborg's ruling that Fox I and Fox II do not meet the criteria set
3 forth under Civil Local Rule 3-12(a)(1) for related cases, Fox is of the view that HCA should,
4 nonetheless, have its wish granted to have Fox II heard before Judge Seeborg. This will also have
5 the advantage of reducing the possibility of conflicting results, as anticipated under Civil Local
6 Rule 3-12(a)(2), and as exemplified by the *res judicata* issue presented in HCA's currently pending
7 Motion to Dismiss.

8 Furthermore, should Fox succeed in his Rule 60(d) motion and Fox I is re-opened before
9 Judge Seeborg, it would be more efficient to have both Fox I and Fox II heard in a consolidated
10 proceeding before Judge Seeborg.

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12 Dated: July 9, 2015

A handwritten signature in cursive script that reads "Richard B. Fox". The signature is written in dark ink and is positioned above a horizontal line.

Richard B. Fox, Plaintiff *Pro Se*

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⁷ HCA's Motion To Dismiss, June 8, 2015, Docket # 10, at p. 6.